

**THE ROSEN LAW FIRM, P.A.**

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*[Proposed] Lead Counsel for Lead Plaintiff and Class*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MARIO EPELBAUM, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

DYNAGAS LNG PARTNERS LP, DYNAGAS  
GP, LLC, DYNAGAS HOLDING LTD.,  
TONY LAURITZEN, MICHAEL GREGOS  
and GEORGE J. PROKOPIOU,

Defendants.

**CASE No.: 1:19-CV-04512-AJN**

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION OF MIHAI  
FELESCU TO APPOINT LEAD  
PLAINTIFF AND APPROVE LEAD  
PLAINTIFF'S SELECTION OF  
COUNSEL**

**CLASS ACTION**

Plaintiff Mihai Felescu ("Movant") respectfully submits this memorandum of law in support of his motion for an Order, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"):

(a) appointing Movant as Lead Plaintiff for the class of all purchasers of the publicly traded securities of Dynagas LNG Partners LP ("Dynagas" or the "Company") between February 16, 2018 through March 21, 2019, both dates inclusive (the "Class Period"); and

(b) approving Movant's selection of The Rosen Law Firm, P.A. as Lead Counsel for the Class.

### **INTRODUCTION AND BACKGROUND**

This action was commenced on May 16, 2019 against the Company and certain of its officers and directors for violations under the Exchange Act. On the following day, an early notice pursuant to the PSLRA was published advising class members of, *inter alia*, the allegations and claims in the complaint, the Class Period, and advising class members of their option to seek appointment as Lead Plaintiff. *See* Ex. 1 hereto.

Dynagas is a publicly traded limited partnership that owns six tanker ships designed for the transportation of liquified natural gas ("LNG"). These LNG tanker ships are operated by a Dynagas affiliate and are chartered to large energy companies typically for periods of eight to ten years. Since the completion of its initial public offering in 2013, and until recently, Dynagas attracted investors by paying a substantial quarterly distribution or dividend. Dynagas was able to make the distribution consistently in part due to the highly predictable nature of revenue derived from long-term contracts with stable counterparties. In its press releases and public presentations and on conference calls with investors, Dynagas and its officers routinely touted the Company's long-term charter contracts and reminded investors that these contracts "provide steady, predictable cash flows." The complaint alleges that during the Class Period, Defendants made materially false and/or misleading statements and/or failed to disclose that: (1) Dynagas entered into new contracts which were not favorable to Dynagas as they provided the Company with lower spot charter rates which significantly reduced revenue than previous contracts; (2) the distribution rate would not be sustainable in the long term because the fixed revenue from long-term contracts; and (3) as a result, Dynagas's public statements were materially false and

misleading at all relevant times. When the true details entered the market, the lawsuit claims that investors suffered damages.

On November 15, 2018, Dynagas issued a press release announcing its earnings for the third quarter of 2018. In the press release, Dynagas revealed that it had realized lower earning than in the previous quarters, lower earnings than the same quarter of 2017, and lower earnings than analysts expected. The Company explained that the lower earnings in the third quarter of 2018 were due, in part, to the less favorable terms under which the *Arctic Aurora* and the *Ob River*, two of Dynagas's tanker ships, were now operating. Dynagas also announced in the press release that the reduction of the charter rate for one third of Dynagas's fleet implicated its ability to generate revenue for years to come. Further alarming investors, and implicitly contradicting the prior assurances that the 25-cent quarterly distributions were safe for the foreseeable future, Defendant Gregos, Dynagas's Chief Financial Officer, declined to answer a question about the future of the distributions on a public conference call the following morning, November 16, 2018. On this news, the price of Dynagas common stock fell \$1.07 per share, or 13.7%, to close at \$6.69 per share on November 16, 2018.

Then, on January 25, 2019, Dynagas announced that it would pay a reduced quarterly distribution of only 6.25 cents per share of common stock, a reduction of almost 75% from the prior quarterly distribution of 25 cents per share. On this news, Dynagas securities fell \$1.14 per share, or over 28.35%, to close at \$2.88 per share on January 28, 2019. The price of Dynagas's Series A Preferred Units fell more than 10% over that same period.

On March 21, 2019, after the market closed, Dynagas issued a press release concerning its fourth quarter 2018 financial results. This was the first time that Dynagas released financial results for a quarter in which both the *Arctic Aurora* and the *Ob River* had operated under the new, less lucrative, charter contracts throughout the entire quarter. Dynagas's press release

reflected quarterly losses of approximately 4 cents per share, significantly worse than analyst expectations. The following day, Dynagas held a conference call on which the Company's management was finally forced to explicitly contradict Defendant Gregos's prior statements to the effect that the 25-cent quarterly distribution was supported by its current cash flow profile as of summer 2018. Dynagas's stock closed at \$2.38 per share on March 22, 2019, down 8.6% from its close on the previous day, even further damaging investors.

### **ARGUMENT**

#### **I. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF**

The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of class action by the later of: (i) 90 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA provides a "rebuttable presumption" that the "most adequate plaintiff" to serve as lead plaintiff is the person or group that:

- (aa) has either filed the complaint or made a motion in response to a notice...;
- (bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii).

As set forth below, Movant satisfies all three of these criteria, and thus is entitled to the presumption of being the "most adequate plaintiff" for the Class.

### **A. Movant Is Willing to Serve as Class Representative**

Movant has filed herewith a PSLRA certification attesting that he is willing to serve as representative of the class and remains willing to provide testimony at deposition and trial, if necessary. *See* Ex. 2 hereto. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the Class.

### **B. Movant Has the Largest Financial Interest in the Action**

The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate plaintiff...is the person or group of persons that ...has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). “While the PSLRA does not specify how we should decide which plaintiff group has the ‘largest financial interest’ in the relief sought, most courts simply determine which potential lead plaintiff has suffered the greatest total losses.” *Takara Trust v. Molex*, 229 F.R.D. 577, 579 (N.D. Ill. 2005). Of the Lax/Olsen-styled<sup>1</sup> factors in determining the largest financial interest, the financial loss is the most significant factor. *See In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 437 (S.D.N.Y. 2008). Indeed, “the best yardstick by which to judge ‘largest financial interest’ is the amount of loss, period.” *In re Bally Total Fitness, Sec. Litig.*, 2005 WL 627960 \* 4 (N.D. Ill. Mar. 15, 2005).

Movant lost \$339,026.98 in connection with his purchases of Dynagas securities. *See* Ex. 3 hereto. Movant is not aware of any other movant that has suffered greater losses in Dynagas securities during the Class Period. Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead Plaintiff for the class.

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<sup>1</sup> *Lax v. Merch. Acceptance Corp.*, 1997 WL 461036 \*5 (N.D. Ill. Aug. 11, 1997); *In re Olsten Corp. Sec. Litig.*, 3 F.Supp.2d 286, 295 (E.D.N.Y. 1998).

### **C. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure**

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In making its determination that the Lead Plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification – a *prima facie* showing that Movant will satisfy the requirements of Rule 23 is sufficient. *Fuwei Films*, 247 F.R.D. at 439 (only a *prima facie* showing is required). Moreover, “typicality and adequacy of representation are the only provisions relevant to a determination of lead plaintiff under the PSLRA.” *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998).

#### **1. Movant’s Claims are Typical**

The Rule 23(a) typicality requirement is satisfied when a plaintiff’s claims arise from the same event, practice or course of conduct that gives rise to other class members’ claims and plaintiff’s claims are based on the same legal theory. *See In re Livent, Inc. Noteholders Sec. Litig.*, 210 F.R.D. 512, 516 (S.D.N.Y. 2002). Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.*

Here, Movant’s claims are typical of the claims asserted by the Class. Movant, like all members of the Class, alleges that Defendants violated the Exchange Act by issuing false and

misleading statements about Dynagas's business. Movant's interests are closely aligned with the other Class members' interests and Movant's interests are, therefore, typical of the other members of the Class.

## **2. Movant Is Adequate**

The adequacy of representation of Rule 23 is satisfied where it is established that a representative party has the ability to represent the claims of the class vigorously, has obtained adequate counsel, and there is no conflict between a potential representative's claim and those asserted on behalf of the class. *In re Cendant Corp. Litigation*, 264 F.3d. 201, 265 (3d Cir. 2001).

Here, Movant has communicated with competent, experienced counsel concerning this case, and made this motion to be appointed as Lead Plaintiff. Movant is not aware that any conflict exists between his claims and those asserted on behalf of the Class. Movant also sustained financial losses from investments in Dynagas securities and is therefore, extremely motivated to pursue claims in this action.

## **D. Movant Is Presumptively the Most Adequate Plaintiff**

The presumption in favor of appointing Movant as Lead Plaintiff may be rebutted only upon proof "by a purported member of the Plaintiffs' class" that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

The presumption that Movant is the most adequate Lead Plaintiff is not, therefore subject to rebuttal. Movant has suffered financial losses and has the largest financial interest in this case of any timely lead plaintiff. The ability of Movant to represent the Class fairly and adequately is discussed above. Movant is not aware of any unique defenses Defendants could raise against him that would render Movant inadequate to represent the Class.

## **II. MOVANT’S SELECTION OF COUNSEL SHOULD BE APPROVED**

The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with Lead Plaintiff’s selection when necessary “to protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

Movant has selected The Rosen Law Firm, P.A. as Lead Counsel. The firm has been actively researching Movant’s and Class Plaintiffs’ claims as well as reviewing publicly available financial and other documents while gathering information in support of the claims against Defendants. Furthermore, the firm has an extensive history bringing significant recoveries to investors and is experienced in the area of securities litigation and class actions, having been appointed as lead counsel in securities class actions in this District and in other courts throughout the nation. *See* Ex. 4 hereto. The firm has prosecuted numerous securities fraud class actions and other complex litigation and obtained substantial recoveries on behalf of investors.

As a result of the firm’s experience in litigation involving issues similar to those raised in this action, Movant’s counsel has the skill and knowledge to prosecute this action effectively and expeditiously. Thus, the Court may be assured that by approving Movant’s selection of Lead Counsel, the members of the class will receive the best legal representation available.



**CONCLUSION**

For the foregoing reasons, Movant respectfully requests the Court issue an Order: (1) appointing Movant as Lead Plaintiff of the Class; (2) approving Movant's selection of The Rosen Law Firm, P.A. as Lead Counsel; and (3) granting such other relief as the Court may deem to be just and proper.

Dated: July 16, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2019, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/Phillip Kim